United Nations CRPD/C/DEU/CO/1

Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Germany*

I. Introduction

1. The Committee considered the initial report of Germany (CRPD/C/DEU/1) at its 174th and 175th meetings (see CRPD/C/SR.174 and 175), held on 26 and 27 March 2015, respectively, and adopted the following concluding observations at its 194th meeting, held on 13 April 2015.

2. The Committee welcomes the initial report of the State party, which was prepared in accordance with the Committee's reporting guidelines, and thanks the State party for the written replies (CRPD/C/DEU/Q/1/Add.1) to the list of issues prepared by the Committee.

3. The Committee appreciates the fruitful dialogue held during the consideration of the report and commends the State party for its large and high-level delegation, which included many representatives of relevant government ministries at the federal and Land levels, as well as the Federal Government Commissioner for Matters relating to Disabled Persons. The Committee also welcomes the participation of the national monitoring body for the Convention.

II. Positive aspects

4. The Committee commends the State party on a number of its achievements, including: the federal-level adoption on 15 June 2011 of a national action plan to implement the Convention; the appointment of the Federal Government Commissioner for Matters relating to Disabled Persons; the amendment to the personal transportation law (Personenbeförderungsgesetz) of 1 January 2013; and the official recognition of German sign language as a separate language.

* Adopted by the Committee at its thirteenth session (25 March–17 April 2015).

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III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1–4)

5. The Committee is concerned that the application of the State party's obligations under the Convention in all parts of its territory has led to the uneven development of disability action plans at the Land level, namely in their content, in their orientation and in the consistent adoption of a human rights-based approach aligned to the Convention.

6. **The Committee emphasizes the State party's obligations under article 4 (5) of the Convention and recommends that the State party ensure that federal, Land and local authorities are aware of the rights set out in the Convention and of their duty to effectively ensure the implementation of those rights.**

7. The Committee is concerned that domestic law does not demonstrate a sufficient understanding of the concepts set out in articles 1 and 2 of the Convention, especially the translation of the Convention into existing legal provisions using a human rights approach.

8. **The Committee recommends that the State party ensure that:**

(a) **Both the federal Government and the Länder revise the legal definition of disability in laws and policies with a view to harmonizing it with the general principles and provisions in the Convention, particularly in matters relating to non-discrimination and full transition to a human rights-based model;**

(b) **Federal and all local governments establish overarching human rights-based action plans with a clear concept of disability, setting adequate measures to promote, protect and fulfil rights, and with targets and indicators to monitor the implementation of the Convention.**

9. The Committee is concerned that persons with disabilities are not guaranteed meaningful and effective participation in decision-making related to their lives, and that accessible communication is insufficient. It is also concerned at the lack of clarity about the roles and responsibilities regarding the implementation of the Convention.

10. **The Committee recommends that the State party develop frameworks for the inclusive, comprehensive and transparent participation of organizations representing persons with disabilities, including those experiencing intersectional discrimination, regarding the adoption of legislation, policies and programmes for the implementation and monitoring of the Convention. It also recommends that the State party provide resources to facilitate the participation of such organizations, especially smaller self-advocacy organizations.**

11. The Committee is concerned that both existing and new legal provisions at the federal and Land levels are not always in line with the Convention. It is also concerned that the significance and scope of the rights of persons with disabilities are not sufficiently recognized in legislative processes and that, in practice, legal remedies and recognition of the Convention before the courts are not ensured.

12. **The Committee recommends that the State party guarantee that:**

(a) **All relevant existing domestic laws are examined by an independent body of experts and harmonized with the Convention accordingly;**

(b) **All future laws and policies are aligned to the Convention;**

(c) **Existing and future legislation incorporate measures to ensure that the rights of persons with disabilities under the Convention are invocable before the courts, with concrete effective remedies.**

B. Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

13. The Committee is concerned that:

(a) Current legislation does not contain a definition of reasonable accommodation and that the denial of such accommodation is not considered a form of discrimination;

(b) The understanding of how reasonable accommodation can be implemented is still largely underdeveloped with respect to administration, jurisdiction and social services provision;

(c) There is no fixed schedule for implementing legal requirements at either the federal or Land levels.

14. **The Committee recommends that the State party:**

(a) **Develop protection against discrimination for persons with disabilities, including intersectional discrimination, as a comprehensive, cross-cutting right in domestic legislation, including at the Land level, and collect relevant data on case law;**

(b) **Take steps to ensure that reasonable accommodation provisions are enshrined in law as an immediately enforceable right in all areas of law and policy, with an explicit definition in the law in line with article 2 of the Convention, and that the denial of reasonable accommodation is recognized and punishable as a form of discrimination;**

(c) **Undertake systematic training on reasonable accommodation at the federal, Land and local levels across all sectors and with the private sector.**

Women with disabilities (art. 6)

15. The Committee is concerned about insufficient action to prevent and combat multiple discrimination of women and girls with disabilities, particularly migrants and refugees, and the inadequate collection of relevant data.

16. **The Committee recommends that the State party:**

(a) **Implement programmes for women and girls with disabilities, particularly migrant and refugee women and girls, including affirmative action to eliminate discrimination in all areas of life;**

(b) **Systematically collect data and statistics on the situation of women and girls with disabilities with indicators to assess intersectional discrimination, and include analytical information in this regard in its next periodic report.**

Children with disabilities (art. 7)

17. The Committee is concerned: (a) that children with disabilities are not systematically involved in decisions affecting their lives; (b) that the parents of children with disabilities cannot decide freely on the type of education and services provided to their children; and (c) about the unequal access to treatment and opportunities for children with disabilities of migrant or refugee parents.

18. **The Committee recommends that the State party:**

(a) **Adopt safeguards in order to protect the right of children with disabilities to be consulted in all matters affecting their lives, ensuring assistance that is appropriate to their disability and age;**

(b) **Ensure the consideration of all children with disabilities in legislation, policies and measures under the principle of equal opportunities and community inclusion, paying particular attention to children with disabilities of migrant or refugee parents.**

Awareness-raising (art. 8)

19. The Committee is concerned that the measures put in place by the State party to reduce stigma faced by persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, have been ineffective.

20. **The Committee recommends that, in consultation with organizations representing persons with disabilities, the State party:**

(a) **Develop a strategy to raise awareness and eliminate discrimination, ensuring that its preparation and implementation are evidence-based, that its impact can be measured and that the public and private media are involved;**

(b) **Ensure that awareness-raising and human rights-based training programmes are provided for all officials involved in the promotion, protection and/or implementation of the rights of persons with disabilities.**

Accessibility (art. 9)

21. The Committee is concerned about the lack of binding obligations for private entities, particularly private media and websites, to avoid creating new barriers and to eliminate existing barriers relating to accessibility and about the inadequate implementation of regulations governing accessibility and universal design.

22. **The Committee draws the attention of the State party to its general comment No. 2 (2014) on accessibility, and recommends that the State party:**

(a) **Introduce targeted and effective measures, such as obligations, monitoring mechanisms and effective penalties for infringement, to extend accessibility for persons with disabilities in all sectors and areas of life, including the private sector;**

(b) **Encourage public and private broadcasting bodies to evaluate their work comprehensively regarding the implementation of the right to accessibility, especially with respect to the use of sign language.**

Situations of risk and humanitarian emergencies (art. 11)

23. The Committee is concerned about: (a) access to the national emergency call system, especially for deaf persons; and (b) the absence of a specific strategy for the inclusion of persons with disabilities in disaster risk reduction and humanitarian relief.

24. **The Committee recommends that the State party establish uniform emergency control centres across the State party, including modern protocols for deaf persons. It also recommends that the State party adopt a human rights-based strategy for disaster risk reduction and humanitarian relief, which should be inclusive and accessible to persons with disabilities.**

Equal recognition before the law (art. 12)

25. The Committee is concerned that the legal instrument of guardianship (*"rechtliche Betreuung"*), as outlined in and governed by the German Civil Code is incompatible with the Convention.

26. **The Committee recommends that the State party:**

(a) **Eliminate all forms of substituted decision-making and replace it with a system of supported decision-making, in line with the Committee's general comment No. 1 (2014) on equal recognition before the law;**

(b) **Develop professional quality standards for supported decision-making mechanisms;**

(c) **In close cooperation with persons with disabilities, provide training on article 12 of the Convention in line with the Committee's general comment No. 1 at the federal, regional and local levels for all actors, including civil servants, judges, social workers, health and social services professionals and the wider community.**

Access to justice (art. 13)

27. The Committee is concerned about: (a) the lack of structures and procedural accommodation within the justice sector specifically designed to provide assistance for persons with disabilities, particularly girls who are victims of violence and abuse; (b) the inaccessibility of judicial facilities and lack of understanding of legal professionals with regard to access to justice; and (c) the lack of implementation and enforcement by the judiciary of the standards of the Convention in the national legal system and within court rulings.

28. **The Committee recommends that the State party:**

(a) **Introduce targeted measures to improve the physical and communicative accessibility of courts, judicial authorities and other bodies involved in administering the law;**

(b) **Introduce legislative reforms so that the national criminal, civil, labour and administrative procedures include the requirement to ensure procedural accommodations for persons with disabilities, taking into particular account persons with intellectual or psychosocial disabilities, deaf-blind persons and children with disabilities;**

(c) **Ensure effective training of personnel in the justice, police and prison systems on the application of human rights standards to promote and protect the rights of persons with disabilities.**

Liberty and security of the person (art. 14)

29. The Committee is concerned about the widespread practice of involuntary placement in institutions of persons with psychosocial disabilities, the lack of protection of their privacy and the lack of data on their situation.

30. **The Committee recommends that the State party take all the immediate necessary legislative, administrative and judicial measures to:**

(a) **Amend legislation to prohibit involuntary placement and promote alternative measures that are in keeping with articles 14, 19 and 22 of the Convention;**

(b) **Carry out an independent, human rights-based review of psychiatric services for persons with disabilities, their privacy and the collection of relevant data.**

31. The Committee notes with concern the lack of information about persons with disabilities in the criminal justice system who have been declared unfit to stand trial, the detention of persons based on that declaration and the application of safety measures, often for an indefinite period of time.

32. **The Committee recommends that the State party:**

(a) **Initiate a structural review of the procedures used to penalize persons with disabilities when they commit criminal offences;**

(b) **Ensure that persons with disabilities have equal access to due process guarantees established for all persons accused of a crime in the criminal justice system, inter alia, the presumption of innocence and the rights to defence and to a fair trial;**

(c) **Ensure reasonable accommodation in places of detention.**

Freedom from torture and cruel, inhuman or degrading treatment or punishment (art. 15)

33. The Committee is deeply concerned that the State party does not recognize the use of physical and chemical restraints, solitary confinement and other harmful practices as acts of torture. It is further concerned about the use of physical and chemical restraints, in particular for persons with psychosocial disabilities in institutions and older persons in residential care.

34. **The Committee recommends that the State party:**

(a) **Carry out a review with a view to formally abolishing all practices regarded as acts of torture;**

(b) **Prohibit the use of physical and chemical restraints in older persons' care settings and institutions for persons with disabilities;**

(c) **Consider compensation for the victims of such practices.**

Freedom from exploitation, violence and abuse (art. 16)

35. The Committee is concerned about the lack of: (a) the appointment of an independent monitoring authority to investigate violence and abuse of persons with disabilities both inside institutions, where they face increased risks, and outside of institutions; (b) independent complaint mechanisms inside institutions; and (c) permanent State funding to protect women against violence.

36. **The Committee recommends that the State party provide a comprehensive and effective strategy with adequate funding to ensure that women and girls with disabilities are effectively protected against violence in all public and private settings. It also recommends that the State party immediately establish or designate an independent body or bodies in accordance with article 16 (3) of the Convention and ensure that complaints linked to incidents in institutions are handled by an independent body.**

Protecting the integrity of the person (art. 17)

37. The Committee is concerned about: (a) the use of compulsory and involuntary treatment, in particular for persons with psychosocial disabilities in institutions and older persons in residential care; (b) the lack of data on involuntary placement and treatment; (c) the practice of carrying out forced sterilization and coercive abortions on adults with disabilities on the basis of substituted consent; and (d) the lack of implementation of the

2011 recommendations of the Committee against Torture (see CAT/C/DEU/CO/5, para. 20) regarding upholding the bodily integrity of intersex children.

38. **The Committee recommends that the State party take the measures, including of a legislative nature, necessary to:**

(a) **Repeal section 1905 of the German Civil Code and explicitly prohibit in law sterilization without the full and informed consent of the individual concerned, eliminating all exceptions, including those based upon substituted consent or court approval;**

(b) **Ensure that all psychiatric treatments and services are always delivered with the free and informed consent of the individual concerned;**

(c) **Investigate human rights violations in psychiatric and older persons care settings in all Länder;**

(d) **Implement all the recommendations of the Committee against Torture (ibid.) relevant to intersex children.**

Freedom of movement and nationality (art. 18)

39. The Committee is concerned about unequal access to and choice of available social services and support for migrants with disabilities.

40. **The Committee urges the State party to ensure that all policies and programmes for migrant populations in the State party are fully accessible for persons with disabilities and that policies and programmes incorporate resources in the native languages of the main migrant communities.**

Living independently and being included in the community (art. 19)

41. The Committee is concerned about the high levels of institutionalization and the lack of alternative living arrangements or appropriate infrastructure, which present additional financial barriers for persons with disabilities. Furthermore, it is concerned that, currently, access to benefits and support services impedes the right to live in the community with an adequate standard of living, owing to the means-testing of those benefits, which do not cover disability-related expenses.

42. **The Committee recommends that the State party:**

(a) **Take steps towards the legal reform of section 13, paragraph 1 (3), of the Twelfth Book of the Social Code for increased social assistance services to enable inclusion, self-determination and the choice to live in the community;**

(b) **Allocate sufficient financial resources to facilitate deinstitutionalization and promote independent living, including increased financial resources to provide community-based outpatient services providing the required support to persons with intellectual or psychosocial disabilities based on the free and informed consent of the individual concerned, across the whole country;**

(c) **Increase access to programmes and benefits to support living in the community and ensure they cover disability-related costs.**

Respect for home and family (art. 23)

43. The Committee is concerned that the State party does not provide adequate support for parents with disabilities to bring up their children and exercise their parental rights, and to facilitate the adoption of children with disabilities.

44. **The Committee recommends that the State party: (a) take measures to ensure explicitly in the law the prohibition of the removal of children from their parents on the basis of their parents' disability; (b) ensure that accessible and inclusive community support and safeguard mechanisms are available for parents with disabilities to exercise parental rights; and (c) provide increased opportunities for the adoption of children with disabilities.**

Education (art. 24)

45. The Committee is concerned that the State party has an education system where the majority of students with disabilities attend segregated special-needs schools.

46. **The Committee recommends that the State party:**

(a) **Immediately develop a strategy, action plan, timeline and targets to provide access to a high-quality, inclusive education system across all Länder, including the required financial resources and personnel at all levels;**

(b) **Scale down segregated schools to facilitate inclusion and ensure that the law and policies uphold the duty that mainstream schools enrol children with disabilities with immediate effect if that is their choice;**

(c) **Ensure that reasonable accommodation is provided at all levels of education and that the right to such accommodation is legally enforceable and justiciable before the courts;**

(d) **Ensure the training of all teachers in inclusive education, increased accessibility of the school environment, materials and curricula, and the provision of sign language in mainstream schools, including at the post-doctoral level.**

Health (art. 25)

47. The Committee is concerned about barriers to gaining access to health care, particularly for asylum seekers and refugees with disabilities.

48. **The Committee recommends that the State party develop and implement plans and allocate resources for the accessibility of health-care services, including services for refugees, rights-based training for health-care professionals, communication, information, respect for free and informed individual consent, and universally designed equipment.**

Work and employment (art. 27)

49. The Committee is concerned about:

(a) Segregation in the labour market;

(b) Financial disincentives for persons with disabilities preventing their entry or transition to the open labour market;

(c) The fact that segregated, sheltered workshops fail to prepare workers for or promote transition to the open labour market.

50. **The Committee recommends that the State party provide regulations that effectively create an inclusive labour market in accordance with the Convention by:**

(a) **Creating employment opportunities in accessible workplaces, in line with general comment No. 2 of the Committee, in particular for women with disabilities;**

(b) **Phasing out sheltered workshops through immediately enforceable exit strategies and timelines and incentives for public and private employment in the mainstream labour market;**

(c) **Ensuring that persons with disabilities do not face any reduction in social protection and pension insurance currently tied to sheltered workshops;**

(d) **Collecting data on the accessibility of workplaces in the open labour market.**

Adequate standard of living and social protection (art. 28)

51. The Committee is concerned that persons with disabilities use personal finances to pay for additional disability-related expenses, especially in relation to living independently.

52. **The Committee recommends that the State party immediately undertake a review of the personal income used by persons with disabilities to meet their needs and to live independently. The Committee also recommends that the State party provide social services to persons with disabilities that provide the same living standards compared to persons without disabilities on comparable incomes.**

Participation in political and public life (art. 29)

53. The Committee is concerned about the exclusion of persons with disabilities from the electoral rights stipulated in section 13 (2–3) of the Federal Electoral Act and equivalent Land legislation, as well as about practical barriers preventing persons with disabilities from exercising the right to vote on an equal basis with others.

54. **The Committee recommends that the State party repeal all laws and regulations that deprive persons with disabilities of the right to vote, as well as reduce barriers and put in place appropriate support mechanisms.**

Participation in cultural life, recreation, leisure and sport (art. 30)

55. The Committee is concerned that the State party has not yet acceded to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

56. **The Committee encourages the State party to adopt all appropriate measures, including ratifying and implementing the Marrakesh Treaty, as soon as possible in order to facilitate access to published material for blind persons, persons with visual impairments and persons with other difficulties in gaining access to published works.**

C. Specific obligations (arts. 31–33)

Statistics and data collection (art. 31)

57. The Committee is concerned that the indicators used for the collection of data regarding persons with disabilities do not follow a human rights-based approach and that they fail to reflect the removal of barriers.

58. **The Committee recommends that the State party systematically collect data, disaggregated by sex, age and disability, across all sectors and develop human rights indicators to provide information on the implementation of the Convention and the removal of barriers.**

International cooperation (art. 32)

59. The Committee is concerned about the lack of attention paid to the rights of persons with disabilities in the State party's policies and programmes relating to international cooperation and development, in particular those related to the Millennium Development Goals.

60. **The Committee recommends that the State party establish:**

(a) **A disability rights-based approach to international development commitments, including the post-2015 development framework;**

(b) **A monitoring and accountability framework with appropriate disability budgeting lines for targeting persons with disabilities in policies and programmes that will implement and monitor the post-2015 development agenda;**

(c) **A comprehensive and integrated database on the mainstreaming of persons with disabilities in general programmes and projects of development assistance, and introduce criteria by which progress of the realization of rights can be systematically analysed and assessed. The Committee also recommends that all development assistance be inclusive of persons with disabilities, including in terms of data collection.**

National implementation and monitoring (art. 33)

61. The Committee is concerned that some focal points at the Land level have not been formally designated in accordance with article 33 (1) of the Convention, and that the State party does not provide the adequate resources on a permanent basis to support the independent monitoring mechanism's work in accordance with article 33 (2).

62. **The Committee recommends that the State party:**

(a) **Consolidate the institutional structures in accordance with article 33 (1) of the Convention and formally implement the designation of focal points and their counterparts in the different areas of application of the Convention in all Länder;**

(b) **Reinforce the necessary resources and conditions for the independent activity of focal points, including the legal status of all Land Commissioners for Matters Relating to Disabled Persons;**

(c) **Strengthen the capacities of the independent monitoring mechanism in accordance with article 33 (2), and ensure the availability of resources for more comprehensive and effective monitoring at the Land and municipal levels.**

Follow-up and dissemination

63. The Committee asks the State party to provide, within 12 months and in accordance with article 35 (2) of the Convention, information on the measures taken to implement the Committee's recommendations as set forth in paragraph 36 above.

64. The Committee requests the State party to implement the recommendations of the Committee contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and parliaments, officials in relevant ministries, local authorities and members of relevant professional groups, such as education, medical and legal professionals, as well as to the media, using modern social communication strategies.

65. The Committee strongly encourages the State party to involve civil society organizations, in particular organizations of persons with disabilities, in the preparation of its periodic report.

66. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, and to make them available on the government website on human rights.

Next report

67. The Committee requests the State party to submit its combined second and third reports by no later than 24 March 2019, and to include therein information on the implementation of the present concluding observations. The Committee invites the State party to consider submitting the above-mentioned reports under the Committee's simplified reporting procedure, according to which the Committee prepares a list of issues at least one year prior to the due date set for the report/combined reports of a State party. The replies of a State party to such a list of issues constitute its next report.